

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GEORGE BENYAMIN,

Plaintiff,

V.

THOMAS BELIVIEAU, ESQ., et al.,

Defendants.

C.A. No. 05-40004-FDS

CERTIFICATION BY DISTRICT JUDGE THAT
APPEAL IS NOT TAKEN IN GOOD FAITH

On March 23, 2005, plaintiff George Benjamin filed a Notice of Appeal of the Memorandum and Order dismissing the above-captioned matter. Pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), this Court finds, and hereby certifies, that Plaintiff Benjamin's appeal is not taken in good faith.

Under 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” *Id.* Similarly, under Fed. R. App. P. 24(a)(3), a party who has been permitted to proceed *in forma pauperis* in the district court may proceed on appeal *in forma pauperis* without further authorization, unless the district court certifies that the appeal is not taken in good faith. *Id.* (emphasis added).

The standard for assessing good faith, in this context, is objective; even if plaintiff subjectively believes his appeal is taken in good faith, it may nonetheless be objectively unreasonable. *See, e.g., Boddie v. New York State Division of Parole*, 2004 WL 1326270 at *1 (S.D.N.Y. 2004) (objective standard and not subjective belief of appellant is applied); *Wilson v. Ferrise*, 2004 WL 3222886 at *1 (D. Minn. 2004) (same); *Bauer v. U.S. Attorney General*, 2003

WL 1610787 at *1 (D. Minn. 2003) (same). “The applicant’s good faith is established by the presentation of any issue that is not plainly frivolous.” *Ellis v. United States*, 356 U.S. 674, 674 (1958) (per curiam); *see also Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000); *Wooten v. District of Columbia*, 129 F.3d 206, 208 (D.C. Cir. 1997). A complaint is “frivolous” if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Based on plaintiff’s prior litigation history with respect to the matters which are the subject of this case, as set forth in detail in the Memorandum and Order entered March 16, 2005 (#4), plaintiff’s appeal is not taken in good faith, as it plainly lacks any arguable basis in law or fact. Accordingly, the Court finds, and hereby certifies, that Benjamin’s appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3).

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: April 28, 2005